

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.NO.3301 OF 2006

AND

M.P.NO.1 OF 2006

The Branch Manager,
The Oriental Insurance Co. Ltd.
Railway Station Road,
Palakkad, Kerala.

... Appellant

Vs.

1.C.Anantha Jyothi
2.Minor C.Raghul Raj
3.K.Samiappa Gounder
4.N.Sivapriyan
5.A.Selvaraj

... Respondents

Prayer :

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.02.2006 in M.C.O.P.No.53 of 2003 on the file of the Motor Accident Claims Tribunal (Sub Court), Pollachi.

For Appellant : Mr.M.Rajasekhar

For RR 1 to 3 : Mr.D.Selvaraju

सत्यमेव जयते
J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant Insurance Company, assailing the award dated 02.02.2006, passed by the 'Motor Accident Claims Tribunal (Sub-Court), Pollachi' (hereinafter referred to as 'the Tribunal'), in M.C.O.P.No.53 of 2003.

2.The case in brief is as follows:

On 11.04.2003, one Chinnappan @ Subramaniam was travelling in a Goods Van (TATA-407), bearing Registration No.TN-41-L-5076, driven by the 4th respondent and insured with the appellant

Insurance Company. At about 10.45 p.m., when the van was nearing Kuppaiyan Temple junction, due to the rash and negligent driving of the 4th respondent, the left-side door of the van got opened and the deceased, who was sitting on the left-side, fell down from the vehicle, as a result of which, the back wheel of the van ran over the deceased. Due to the said impact, the deceased sustained grievous injuries on his head and all over the body and ultimately, succumbed to the same. Hence, the respondents 1 to 3, who are the legal heirs of the deceased, filed a claim petition claiming a compensation of Rs.25,00,000/- before the Tribunal, which, on consideration of the materials and evidence, awarded a total compensation of Rs.7,30,000/- with interest @ 7.5% p.a. from the date of claim petition. Challenging the same, the appellant Insurance Company has filed the present appeal.

3.The learned counsel appearing for the appellant Insurance Company submitted that the deceased was in a drunken state at the time of accident and when he tried to open the door for vomiting, while the vehicle was in motion, he fell down and sustained injuries and therefore, the accident had occurred only due to negligence on the part of the deceased; as per Ex.P3 motor vehicle Inspector's report, no defect has been mentioned; and the 4th respondent/driver of the Van has been acquitted from the criminal proceedings in connection with this case; further the deceased had travelled in the van as a gratuitous passenger and hence, the appellant insurance company is not liable to pay compensation. The learned counsel also submitted that in the absence of any proof with regard to the age and income of the deceased, the compensation determined under the head "loss of income" is on the higher side and the same has to be reduced substantially.

4.Per contra, learned counsel appearing for the respondents 1 to 3/claimants, submitted that the Tribunal, after considering the entire materials and evidence available on record, has rightly fastened the liability on the appellant insurance company and awarded the just compensation and hence, the same warrant no interference at the hands of this Court.

5.Heard both sides and perused the records.

6.With regard to the accident, in which, the deceased died, due to the injuries received, Ex.P1 FIR was registered and Ex.P2 charge sheet was filed against the driver of the van, insured with the appellant insurance company. Though the appellant insurance company has filed Ex.R4 criminal court judgment to the effect that the driver of the Van was acquitted from the criminal proceedings, the Tribunal was of the view that he was absolved of his guilt on the ground of benefit of doubt. The

first claimant, wife of the deceased was examined as P.W.1 and according to her, the accident had happened due to the rash and negligent driving of the driver of the Van. That apart, one Subramanian, who was an eye-witness to the accident, was examined as P.W.3 and he deposed that on 11.04.2003, while he was proceeding from his village to Vadakkipalayam, on Soolakkal Road, when a van (TATA-407), bearing Registration No.TN-41-L-5076, overtook him in a rash and negligent manner, the deceased Chinnappan @ Subramanian, who belonged to his village, fell down from the van and sustained bleeding injuries. The Tribunal, based on those materials and evidence, has rightly come to the conclusion that the accident had occurred only due to the rash and negligent driving on the part of the driver of the van and hence, the same need not be interfered with by this Court.

7.As far as the liability of the appellant insurance company is concerned, the Tribunal after appreciating the evidence and materials adduced by the parties, has observed that the deceased had travelled in the van as owner and not as a gratuitous passenger and ultimately, fastened the liability on the appellant insurance company, which finding is perfectly right and hence, the same warrants no interference by this Court.

8.As regards the quantum of compensation, the respondents/claimants stated that the deceased was aged about 39 years and was earning Rs.12,000/- per month by doing agricultural, poultry and milk business. Placing reliance on Ex.P7-chitta, Ex.P8-patta relating to the property owned by the deceased and Ex.P12 -pass book pertaining to agricultural loan, the Tribunal has fixed the monthly income of the deceased at Rs.6,000/-, applied unit method for making deduction towards personal expenses, adopted the multiplier of 15, taking the age of the deceased as 42 years, based on Ex.P5 post mortem report and arrived at the compensation under the head "loss of income" at Rs.7,20,000/- [4000 x 12 x 15], which is fair, just and reasonable and hence, the same need not be interfered with by this Court. That apart, the Tribunal has awarded Rs.5,000/- towards funeral expenses and Rs.5,000/- towards loss of love and affection, which are just and reasonable and hence, the same warrant no interference.

9.Thus, finding no merit, this appeal fails and is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

10.The appellant Insurance Company is directed to deposit the award amount, as ordered by the Tribunal, with interest and costs, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal shall transfer

the amount lying in the deposit to the respective bank accounts of the respondents 1 and 3/claimants, as per the ratio of apportionment made by the Tribunal. In respect of the second respondent/minor claimant, he should have attained majority as of now and hence, the Tribunal shall transfer his share of award amount to his bank account, on making proper application.

Sd/-
Assistant Registrar(Admin II)

//True Copy//

Sub Assistant Registrar

mkn/rk

To

1. The Motor Accident Claims Tribunal
(Sub Court), Pollachi.
2. The Section Officer,
VR Section, High Court of Madras.

+1cc to Mr.M.Rajasekhar Advocate, S.R.No.46404

+1cc to Mr.D.Selvaraju, Advocate, S.R.No.46643

C.M.A.No.3301 of 2006
and M.P.No.1 of 2006

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